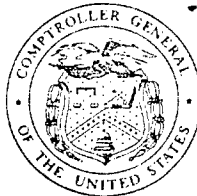


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-197754

DATE: May 1, 1980

MATTER OF: Forest Service - Ratification of
Unauthorized Purchases

DIGEST:

Payment for unauthorized purchases of products and services accepted by the Forest Service may be made on a quantum valebat or quantum meruit basis, as applicable, since Government received benefits and unauthorized actions have been implicitly ratified.

The United States Department of Agriculture, Forest Service, requests our decision on whether 10 firms, that supplied services and products as a result of requests by personnel acting without procurement authority, are entitled to payment. AGC00034

Item 1

On October 1, 1979, a purchasing agent for the Grand Mesa, Uncompahgre National Forest, after contacting several unwilling suppliers, orally requested the Dos Rios Motor Hotel, Gunnison, Colorado, to provide rooms and meals for crews that were fighting the Coal Creek fire. The agent had authority of \$1,000, but the fire lasted until October 9, 1979, which was much longer than expected when the arrangement was originally made. As a result, charges accumulated to \$7,845.26. DLG04533

The fire started on private land where the construction equipment of C. Ryan & Son was working. When the fire spread to the adjoining National Forest the forest supervisor and fire boss instructed a Forest Service employee to secure the use of the equipment and personnel of Ryan in fighting the fire. Although the requestor had no procurement authority, urgency of the fire dictated the acquisition. Ryan's charges for the services were \$9,430.85. DLG04534

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Item 2

On August 20, 1979, a Forest Service employee, without procurement authority, orally requested a copy of a transcript of hearings conducted by the Colorado Water Quality Control Commission, at which the Regional Forester had testified. The request was made before preparation of a purchase order because of an announcement made at the hearing by the reporter that no requests for copies would be considered after the close of that day's hearing. (Holman E. Mills, Arvada, Colorado, billed \$175.50 for the transcript.)

Item 3

On September 27, 1979, a criminal investigator assigned to Rio Grand National Forest, without procurement authority, purchased binoculars and related items for use in law enforcement work. No other Forest Service equipment was available; none outside the Government was immediately available for loan, and the 45-day delivery time for supplies from the mandatory Federal Supply Schedule contractor would not meet the urgent need. Rominger's Hardware, Monte Vista, Colorado, billed \$900 for the items. DL604536

Item 4

A purchasing agent for the Forest Service authorized delivery of a motor grader to H. W. Moore Equipment Company, Grand Junction, Colorado, for repairs, which were estimated to cost \$200. The purchasing agent's authority was \$500. When the machine was dismantled, major defects were discovered. Under the circumstances it was considered impractical to obtain estimates from other firms, so Moore performed the repairs and billed \$3,671.40. DL604536

Item 5

On or about September 19, 1979, a Forest Service employee, upon advice of counsel, supplied Chen and Associates, Inc., Denver, Colorado, with soil samples for testing for the purpose of comparing the results DL604537

with test results already received from another testing firm. The test results were intended for use in defense of anticipated claims by a construction contractor on a Forest Service project. Chen billed \$904 for the services.

Item 6

A staff specialist for cooperative (state-federal) fire programs, without authority, on August 31, 1979, orally ordered 55 copies of a publication distributed by the Nebraska Forest Service. Delivery occurred before an authorized requisition was prepared. The Forest Service was billed \$40.56 for the copies. DLG 04538

Item 7

A Forest Service employee seeks reimbursement of \$17.27 paid to Garden Supply Discount, Lakewood, Colorado, for pots and soil purchased, without authority, for use in connection with the Forest Service's Christmas tree sales. DLG 04539

Item 8

On October 29, 1979, a Forest Service employee, upon instructions by the Office of Personnel Management, ordered spot announcements on radio from Latino Broadcasting Corporation, Denver, Colorado, for the purpose of implementing an Equal Opportunity Recruitment plan. The amount claimed is \$128. DLG 04540

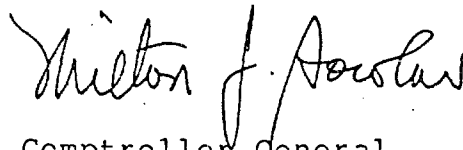
Item 9

A Forest Service employee at White River National Forest, apparently in August 1979, ordered a change in a 3-dimensional map which was prepared by CTI Exhibits, Denver, Colorado, under purchase Order No. 40-82x9-8-1290. CTI billed \$200 for the change, and additional amounts of \$120 for storage of the map, and interest for late payment of \$69. DLG 04541

The United States cannot be bound beyond the actual authority conferred upon its agents by statute or regulation. United States v. Crance, 341 F.2d 161, 166 (8th Cir. 1965). However, payment may be made for services rendered on a quantum meruit basis (reasonable value of labor) or for goods furnished on a quantum valebat basis (reasonable value of goods sold and delivered), where a showing is made that the (1) Government received a benefit and the (2) unauthorized action has been expressly or impliedly ratified by authorized contracting officials of the Government. Defense Mapping Agency, B-183915, June 25, 1975, 75-2 CPD 15.

The Forest Service states that the products and services were delivered or performed by the vendors, and were used by the Government and thus the Government received a benefit. It also reports that the price in each case is reasonable and no personal gain was involved. Acceptance of the services and the recommendation that payment be made are recognized bases for inferring implied ratification. Forest Service - Ratification of Unauthorized Purchase, B-197007, December 19, 1979, 79-2 CPD 425.

Accordingly, we will allow payment on a quantum valebat or quantum meruit basis, as appropriate, for the amounts claimed, if otherwise correct, with one exception. That part of the claim by CTI Exhibits for interest of \$69 is not allowable in the absence of specific contract provision. We also question the reasonableness of the \$120 storage charge claimed by CTI for the 55" x 53" map, since it appears based solely on what the vendor asserts is its "minimum storage charge of \$20.00 per month." 51 Comp. Gen. 251 (1971).



For the Comptroller General
of the United States